

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

SEP 25 2006

JAMES A. LUCAS,

U.S. DISTRICT COURT
ELKINS WV 26241

Petitioner,

v.

Civil Action No. 2:05cv61

THOMAS McBRIDE, Warden,

Respondent.

ORDER

It will be recalled that on March 7, 2006, Magistrate Judge Kaull filed his Report and Recommendation, wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Petitioner filed his objection to the Report and Recommendation on March 17, 2006 objecting to the Magistrate Judge's recommendation that his Motion for Summary Judgment be denied. On March 21, 2006, Respondent filed his objection to the Magistrate Judge's recommendation objecting to the Magistrate Judge's recommendation that his Motion to Dismiss for successive petition be denied.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Respondent in his Motion to Dismiss were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Further, the Court finds that the Respondent has not raised any issues that were not thoroughly considered by the Magistrate Judge in his Report and Recommendation. Further, the Court finds that the Magistrate Judge has also properly applied the law with regard to the Petitioner's Motion for Summary Judgment. Moreover, the Court, upon

an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court on the Respondent's Motion to Dismiss and Petitioner's Motion for Summary Judgment in this action. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action progress in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Respondent's Motion to Dismiss Petition as Successive shall be, and the same hereby is, **DENIED**. It is further

ORDERED that the Respondent shall file an Answer in accordance with the Federal Rules of Civil Procedure. It is further

ORDERED that the Petitioner's Motion for Summary Judgment shall be, and the same hereby is, **DENIED**.

The Court further notes that by Order entered by the Magistrate Judge on August 29, 2006, the Magistrate Judge denied Petitioner's requests for appointment of counsel. On September 7, 2006, Petitioner filed his objection to the Magistrate Judge's Order denying his Motion to Appoint Counsel. Upon review by the Court, the Court finds that the Magistrate Judge properly applied the law to the facts before him in denying Petitioner's Motion to Appoint Counsel and that the Order entered by the Magistrate Judge was appropriate. Accordingly, the Petitioner's objection to the Magistrate's denial of appointment of federal counsel is hereby **OVERRULED**.

ENTER: September 25th, 2006


United States District Judge